

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
JOHN C. SHELHORSE, IV,) **Supreme Court #SC85977**
)
Respondent.)

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

SHARON K. WEEDIN #30526
STAFF COUNSEL
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ATTORNEYS FOR INFORMANT

TABLE OF CONTENTS

<u>TABLE OF CONTENTS</u>	1
<u>TABLE OF AUTHORITIES</u>	2
<u>STATEMENT OF JURISDICTION</u>	3
<u>STATEMENT OF FACTS</u>	4
<u>POINT RELIED ON</u>	6
<u>I.</u>	6
<u>II.</u>	7
<u>ARGUMENT</u>	8
<u>I.</u>	8
<u>II.</u>	13
<u>CONCLUSION</u>	15
<u>CERTIFICATE OF SERVICE</u>	16
<u>CERTIFICATION: RULE 84.06(C)</u>	16
<u>APPENDIX</u>	A-1

TABLE OF AUTHORITIES

CASES

<i>In re Hardge-Harris</i> , 845 S.W.2d 557 (Mo. banc 1993)	7, 14
<i>In re Harris</i> , 890 S.W.2d 299 (Mo. banc 1994)	7, 14
<i>In re Murphy</i> , 732 S.W.2d 895 (Mo. banc 1987)	6, 10
<i>In re Pendergast</i> , 525 S.W.2d 341 (Mo. banc 1975)	6, 10
<i>In re Reza</i> , 743 S.W.2d 411 (Mo. banc 1988)	6, 10
<i>In re Smith</i> , 189 Ariz. 144, 939 P.2d 422 (1997)	11
<i>In re Staab</i> , 785 S.W.2d 551 (Mo. banc 1990)	7, 14
<i>Kentucky Bar Association v. Liebert</i> , 786 S.W.2d 874 (Ky. 1990)	11
<i>Kentucky Bar Association v. Trumbo</i> , 986 S.W.2d 900 (Ky. 1999)	11

OTHER AUTHORITIES

Annot., 96 A.L.R. 5th 23 (2002)	11
Campbell, “The President’s Page,” J.Mo.B., Jan.-Feb. 1987	9, 11

RULES

Rule 15	6, 8, 9, 10, 11
Rule 4-5.5(c)	6, 8, 9
Rule 4-8.1(b)	7, 13

STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

Respondent John Shelhorse was licensed in 1995. **App. 15.** Respondent has no prior disciplinary history. **App. 39 (T. 36).**

In 2002, eight letters were mailed to Respondent in an effort to prompt him to bring himself into compliance with Rule 15. **App. 2-14.** Informant filed an information in June of 2003 alleging in count II that Respondent had not complied with the reporting requirements of Rule 15 for the reporting years 1998-1999, 1999-2000, 2000-2001, and 2001-2002. **App. 17-19.** Respondent admitted in his answer to the information that he had not complied with this Court's MCLE reporting requirements for the four reporting years in question. **App. 26.** Respondent also stipulated to the fact that he had not complied with Rule 15 for the four reporting years at issue. **App. 32 (T. 8), 36 (T. 24).**

At the November 19, 2003, hearing before the Disciplinary Hearing Panel, Respondent testified he had "been taking CLEs as fast as my business will allow me, and since meeting with Mr. Flanagan [sic] earlier this year, I believe I have caught up to now only being two years delinquent." **App. 37 (T. 26).** It was anticipated, at the time of the disciplinary hearing, that Respondent would bring himself into compliance with Rule 15 and provide letters from The Missouri Bar establishing that compliance. **App. 34 (T. 14), 37 (T. 27-28).** As of June 1, 2004, Respondent remained MCLE delinquent for reporting years 1998-1999, 1999-2000, 2000-2001, and 2001-2002. **App. 46.**

The information served on Respondent in June of 2003 also alleged four separate instances of Respondent's failure to respond to requests for information from disciplinary

authorities. **App. 16, 18, 19, 21.** Respondent admitted in his answer that he failed to respond to four letters, which the disciplinary committee had sent him on March 10 and May 5, 2003. **App. 25, 27, 28.** Respondent also stipulated to the hearing panel that he failed to respond to the four letters. **App. 33 (T. 9).** Respondent has no drinking or drug problem, and a wonderful home life. **App. 40 (T. 37).**

At the hearing, Informant dismissed those allegations in the information that had not been admitted or stipulated to for the reasons that the complaining witnesses failed to appear or had resolved their complaints against Respondent. **App. 32 (T. 7-8).**

The Disciplinary Hearing Panel, in March of 2004, issued a decision recommending that Respondent be reprimanded and ordered to “enter into a mentor relationship with a member of the Bar in order to ensure that Respondent comply with his MCLE delinquencies,” with reports to be provided monthly to the disciplinary committee and the Office of Chief Disciplinary Counsel regarding Respondent’s efforts. **App. 44.** Informant could not concur in this recommendation, so the record was filed with the Court pursuant to Rule 5.19(d).

POINT RELIED ON

I.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR SIX MONTHS BECAUSE RESPONDENT HAS BEEN PRACTICING IN VIOLATION OF RULE 4-5.5(c) FOR MANY YEARS IN THAT RESPONDENT HAS NOT FILED AN ANNUAL REPORT OF CONTINUING LEGAL EDUCATION CREDIT HOURS AS REQUIRED BY RULE 15.06 FOR REPORTING YEARS 1998-1999, 1999-2000, 2000-2001, AND 2001-2002, DESPITE REPEATED ASSURANCES THAT HE WOULD BRING HIMSELF INTO COMPLIANCE.

Rule 15

Rule 4-5.5(c)

In re Reza, 743 S.W.2d 411 (Mo. banc 1988)

In re Murphy, 732 S.W.2d 895 (Mo. banc 1987)

In re Pendergast, 525 S.W.2d 341 (Mo. banc 1975)

POINT RELIED ON

II.

**THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S
LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT
FOR SIX MONTHS BECAUSE RESPONDENT VIOLATED RULE
4-8.1(b) IN THAT HE FAILED TO RESPOND TO FOUR
REQUESTS FOR INFORMATION FROM DISCIPLINARY
AUTHORITIES.**

Rule 4-8.1(b)

In re Hardge-Harris, 845 S.W.2d 557 (Mo. banc 1993)

In re Harris, 890 S.W.2d 299 (Mo. banc 1994)

In re Staab, 785 S.W.2d 551 (Mo. banc 1990)

ARGUMENT

I.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR SIX MONTHS BECAUSE RESPONDENT HAS BEEN PRACTICING IN VIOLATION OF RULE 4-5.5(c) FOR MANY YEARS IN THAT RESPONDENT HAS NOT FILED AN ANNUAL REPORT OF CONTINUING LEGAL EDUCATION CREDIT HOURS AS REQUIRED BY RULE 15.06 FOR REPORTING YEARS 1998-1999, 1999-2000, 2000-2001, AND 2001-2002, DESPITE REPEATED ASSURANCES THAT HE WOULD BRING HIMSELF INTO COMPLIANCE.

In the late 1980s, a special committee of The Missouri Bar submitted a proposed MCLE rule to the Missouri Supreme Court, which adopted it with only minor changes. The first reporting year was July 1, 1987, through June 30, 1988. In the Journal of the Missouri Bar, then Bar President John Gibson summarized the rationale underlying a Rule requiring Missouri lawyers to acquire and report continuing legal education credits:

[T]he Court has challenged all of us, as conscientious practitioners of the law, to stay abreast of legal trends. . . . [W]e are being asked to live up to our professional obligation to maintain the highest possible standards of competence.

This is how it should be.

Campbell, J., “The President’s Page,” J.Mo.B., Jan.-Feb. 1987, at 9.

Since 1987, the CLE offerings available to Missouri lawyers have multiplied and CLE credits have become increasingly more convenient to acquire. No longer need the harried solo practitioner dedicate whole days away from his practice, possibly traveling far away to a metropolitan area to maintain a physical presence in a room “for the duration.” A quick check of The Missouri Bar’s website reveals that, for the month of June, 2004, alone, eight telephone seminars, four live seminars each in the Kansas City and St. Louis metropolitan areas, two live seminars each in Columbia and Jefferson City, one (the highly regarded Solo & Small Firm Conference) at the Lake of the Ozarks, and one in Springfield are available as CLE offerings. The Bar also offered nine video replay seminars in West Plains, Kirksville, St. Joseph, St. Charles, Cape Girardeau, Union, Joplin, and Springfield, in June alone. The topics covered by the June offerings span the legal spectrum, from “Defending Drivers in DWI Cases,” to “Legal, Damage & Valuation Issues in Intellectual Property,” to “Concealed Carry of Firearms.”

Despite this cornucopia of offerings in terms of place, subject matter, and mode of transmission, Mr. Shelhorse is not alone on the “MCLE delinquent list.” The list is provided by the Bar to the Office of Chief Disciplinary Counsel pursuant to Rules 15.06(f) and 4-5.5(c). Some four hundred sixty-two Missouri licensed lawyers earned a spot on the MCLE delinquent list for the most recently completed reporting year, 2002-2003. The numbers on the list have varied over the years, depending on whether the Bar has included on the list the names of lawyers also “not in good standing” due to

nonpayment of the annual enrollment fee. Yet the totals, a random sampling of which follow, are consistently too high: 1993-1994 (243), 1997-1998 (332), 2000-2001 (391), 2001-2002 (245).

So far as has been discerned, this Court has not, in a published opinion, addressed the professional misconduct that a lawyer commits by continuing to practice law when he or she has not completed and reported the credit hours mandated by Rule 15.05. The Court has not, however, hesitated to apprise lawyers that practicing when one has not paid the annual enrollment fee is not acceptable and is sanctionable. *In re Reza*, 743 S.W.2d 411 (Mo. banc 1988); *In re Murphy*, 732 S.W.2d 895 (Mo. banc 1987); *In re Pendergast*, 525 S.W.2d 341 (Mo. banc 1975). A practicing lawyer's failure to pay the annual fee is surely no more problematic than his or her failure to acquire this Court's "minimum" level of continuing legal education credits. That is particularly true where, as here, it occurs on a recurring basis.

The efforts undertaken by the Office of Chief Disciplinary Counsel, before an information was filed, to persuade Mr. Shelhorse to become compliant are, unfortunately, not atypical. As the letters at Appendix 2-14 attest, no fewer than eight letters were sent to Respondent in 2002 alone in an attempt to prompt him to become compliant. Additionally, Mr. Shelhorse was compelled to appear, via subpoena, at the Office of Chief Disciplinary Counsel in November of 2002, to explain his MCLE deficiency and to formulate a plan to correct it. Mr. Shelhorse repeatedly professed good intentions, all the way up to and including his testimony at the disciplinary hearing, to bring himself into compliance. Yet, Respondent remains noncompliant.

Lawyers with busy and demanding practices may resent what may be perceived as time “off the clock,” participating in “continuing legal education.” Regardless of the individual lawyer’s perception of the value of continuing legal education, it is a Court Rule that active lawyers acquire and report the credits. At least twenty other state Supreme Courts have disciplined lawyers both for noncompliance with CLE requirements alone, or in combination with other misconduct. See Annot., 96 A.L.R. 5th 23 (2002). License suspension has been imposed as a consequence of lawyers’ failure to comply with CLE requirements. See *Kentucky Bar Association v. Trumbo*, 986 S.W.2d 900 (Ky. 1999); *In re Smith*, 189 Ariz. 144, 939 P.2d 422 (1997); *Kentucky Bar Association v. Liebert*, 786 S.W.2d 874 (Ky. 1990). As Mr. Gibson noted back in 1987, “MCLE is a commitment to the members of the general public whom we serve. . . . The state bar’s leadership position on MCLE is an indication of its willingness to regulate itself for the benefit of the public.” Campbell, J., “The President’s Page,” J.Mo.B., Jan.-Feb. 1987, at 9. Neither Mr. Shelhorse, nor any other active member of the bar, should be allowed, year after year, to shirk this duty to the profession and the public.

Informant and Respondent agreed, at the time this matter was heard before the Panel, that the Panel should recommend a public reprimand to the Court. Informant agreed to this recommendation on the understanding that Respondent would, finally, bring himself in compliance with Rule 15, a condition Respondent has not met. The Panel actually recommended, in its decision, a reprimand, coupled with the appointment of a mentor, who was to supply the “Committee” and the Office of Chief Disciplinary Counsel with monthly reports regarding Respondent’s progress. Informant does not

concur with the Panel's recommendation for several reasons. Most important, Respondent has not brought himself into compliance despite his repeated assurances. The time for a mentor and "monthly reports" is long past. Anyone licensed to practice law in this state should be competent to become CLE compliant without a mentor. Respondent has been counseled by the Office of Chief Disciplinary Counsel staff and Mr. Janku about what he needs to do to become compliant. Respondent's license should be suspended with no leave to apply for reinstatement for six months.

ARGUMENT

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR SIX MONTHS BECAUSE RESPONDENT VIOLATED RULE 4-8.1(b) IN THAT HE FAILED TO RESPOND TO FOUR REQUESTS FOR INFORMATION FROM DISCIPLINARY AUTHORITIES.

Mr. Shelhorse admitted to the Disciplinary Hearing Panel that he made no response to four letters requesting information sent to him by disciplinary authorities. A Region XI disciplinary committee sent Respondent letters requesting information about a complaint registered by a client named Ray, a complaint filed by a client named Blandford, and a complaint made by a client named Brown. Two of the committee's letters were sent to Respondent on March 10, 2003; the third (Brown complaint) was sent to Respondent on May 5, 2003. The fourth letter to which Mr. Shelhorse made no response was one sent him from the Office of Chief Disciplinary Counsel inquiring about his non-compliance with Rule 15's "complete and report" requirement. Respondent's explanation for his failure to respond is that he "was concerned by the complaints, I was afraid of it, and it was just something I put on the back burner and allowed other matters, put my attention on other matters." **App. 39 (T. 35).**

Disciplinary bar committees are made up of volunteers who donate their time and expertise. “These services require considerable commitments of time and effort for which the members of the committees are not paid. They are entitled to expect courteous and prompt cooperation from all members of the profession including those who are charged with wrongdoing.” *In re Hardge-Harris*, 845 S.W.2d 557, 560 (Mo. banc 1993). “The failure to respond to such requests adversely reflects on an attorney’s fitness to practice law and promotes delay of the entire disciplinary process.” *In re Harris*, 890 S.W.2d 299, 302 (Mo. banc 1994). Not even claustrophobic-like panic attacks, as experienced by Respondent Staab, much less Respondent’s “concern” and “fear” should excuse his failure to respond to four separate requests for information. See *In re Staab*, 785 S.W.2d 551, 554 (Mo. banc 1990). Respondent conceded to the Panel that he had no reasonable excuse, just his own negligence, to blame for his misconduct. Responding to requests for information from disciplinary authorities is a responsibility to the legal profession that cannot be shirked, regardless of one’s apprehension about the process.

CONCLUSION

Respondent John Shelhorse has violated, repeatedly, Rules 4-5.5(c), 4-8.1(b), and 15. Respondent has not taken advantage of the many, many opportunities extended him to acquire and report the continuing legal education credits required by Rule 15. His continuing failure to comply, even after initiation of a disciplinary case and hearing, coupled with his continuing practice of law in violation of Rule 4-5.5(c), and his failure to respond to requests for information from a disciplinary committee evidence a willful disregard of his duties to the legal profession. Respondent's license should be suspended with no leave to apply for reinstatement for six months.

Respectfully submitted,

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

By: _____
Sharon K. Weedin #30526
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ATTORNEY FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2004, two copies of
Informant's Brief have been sent via First Class mail to:

John C. Shelhorse, IV
Attorney at Law
1901 Park Avenue
St. Louis, MO 63104-2527

Sharon K. Weedin

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06b);
3. Contains 2,677 words, according to Microsoft Word, which is the word
processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that
it is virus free.

Sharon K. Weedin

APPENDIX